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In The
Supreme Court of the United States

JOSE ERNESTO MEDELLIN,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Writ Of Certiorari To The Court Of Criminal Appeals Of Texas

BRIEF OF THE COMMONWEALTH OF VIRGINIA, 27 OTHER STATES, AND PUERTO RICO AS AMICI CURIAE IN SUPPORT OF TEXAS

ROBERT F. MCDONNELL
Attorney General of Virginia

WILLIAM E. THRO
State Solicitor General
Counsel of Record

STEPHEN R. MCCULLOUGH
Deputy State Solicitor General

WILLIAM C. MIMS
Chief Deputy Attorney General

OFFICE OF THE
ATTORNEY GENERAL
900 East Main Street
Richmond, Virginia 23219
(804) 786-2436
(804) 786-1991 (facsimile)

Counsel for the Commonwealth of Virginia

August 23, 2006

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TROY KING
Attorney General of Alabama

TALIS J. COLBERG
Attorney General of Alaska

TERRY GODDARD
Attorney General of Arizona

DUSTIN MCDANIEL
Attorney General of Arkansas

EDMUND G. BROWN, JR.
Attorney General
of California

JOHN W. SUTHERS
Attorney General of Colorado

JOSEPH R. BIDEN, III
Attorney General
of Delaware

BILL MCCOLLUM
Attorney General of Florida

THURBERT E. BAKER
Attorney General of Georgia

LAWRENCE WASDEN
Attorney General of Idaho

STEVE CARTER
Attorney General of Indiana

PAUL J. MORRISON
Attorney General of Kansas

GREGORY D. STUMBO
Attorney General of Kentucky

JIM HOOD
Attorney General
of Mississippi

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

MIKE MCGRATH
Attorney General of Montana

CATHERINE CORTEZ MASTO
Attorney General of Nevada

ROY COOPER
Attorney General
of North Carolina

WAYNE STENEHJEM
Attorney General
of North Dakota

W.A. DREW EDMONDSON
Attorney General
of Oklahoma

HARDY MYERS
Attorney General of Oregon

THOMAS W. CORBETT, JR.
Attorney General
of Pennsylvania

HENRY D. MCMASTER
Attorney General
of South Carolina

LAWRENCE E. LONG
Attorney General
of South Dakota

ROBERT E. COOPER, JR.
Attorney General and
Reporter of Tennessee

MARK L. SHURTLEFF
Attorney General of Utah

ROB MCKENNA
Attorney General
of Washington

ROBERTO J. SÁNCHEZ RAMOS
Attorney General
of Puerto Rico

QUESTIONS PRESENTED

The States' brief will address the following questions:

1. May a private party enforce a judgment of the International Court of Justice?

2. Does the President's Determination – that a private party should be able to enforce a judgment of the International Court of Justice in state court, notwithstanding applicable state – law procedural bars – violate congressional intent to preserve the autonomy of the States to adjudicate criminal cases based on state rules?

3. Does the constitutional principle of dual sovereignty preclude the President from commandeering state courts as the sole mechanism for enforcing a treaty obligation?

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INTEREST OF AMICI

The Constitution "split the atom of sovereignty" by "establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U.S. Term Limits v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). By dividing sovereignty between the National Government and the States, the Constitution ensured that "a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." *The Federalist No. 51*, at 291 (James Madison).[1] Thus, "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." *Texas v. White*, 74 U.S. (7 Wall.) 700, 725 (1868). This division of sovereignty "protects us from our own best intentions" by preventing the concentration of "power in one location as an expedient solution to the crisis of the day." *New York v. United States*, 505 U.S. 144, 187 (1992). Indeed, "a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991). The President's implementation of the Nation's treaty obligations cannot repudiate this "defining feature of our Nation's constitutional blueprint." *Federal Mar.*

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[1] *See also The Federalist No. 28*, at 149 (Alexander Hamilton) ("Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government"). Throughout this Brief, all page number citations to *The Federalist* are from *The Federalist Papers* (Clinton Rossiter, ed., 1961, Mentor Books Ed. 1999).

Comm'n v. South Carolina State Ports Auth., 535 U.S. 743, 751 (2002).

Today, the United States is extensively involved in international business and cultural exchanges, in military cooperation or conflict, and has ratified treaties governing a host of subjects. Seeking to comply with a decision of the International Court of Justice, the President has made a determination that he may set aside state law in a non-emergency situation. Such sweeping authority, if sanctioned, would dramatically undermine the sovereignty of the States.

The States do not dispute that that the President has a significant interest in complying with *Case Concerning Avena & Other Mexican Nationals (Mexico v. United States)*, 2004 I.C.J. 128 (Mar. 31), ensuring security of United States citizens abroad, promoting good relations with Mexico and other foreign nations, and reinforcing our Nation's commitment to the rule of law. Nevertheless, this Court must not "confus[e] the issue of a power's validity with the cause it is invoked to promote." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952) (Jackson, J., concurring). The result sought here, a review of certain specified convictions to determine whether any prejudice ensued from a violation of the *Vienna Convention on Consular Relations*, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 262, can be accomplished by methods other than the President's unprecedented intrusion into state sovereignty.[2]

SUMMARY OF ARGUMENT

First, Medellin cannot enforce the decision of the International Court of Justice. Decisions of the International Court of Justice bind Nations, not private parties. Nothing in the establishment of the International

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[2] For example, Congress could amend federal habeas corpus law to allow limited judicial review for certain individuals.

Court of Justice indicates an intent to allow private parties to enforce its judgments in domestic courts. Moreover, allowing private parties to enforce decisions of the International Court of Justice in domestic courts would have undesirable effects.

Second, the President's unilateral determination that private parties should be able to enforce a decision of the International Court of Justice contravenes Congressional intent. While the President has broad discretion in the area of foreign relations, his power is at its lowest ebb when he operates contrary to the intent of Congress. In ratifying the Vienna Convention, Congress did not create any private rights or disrupt state law. Moreover, through the Anti-terrorism and Effective Death Penalty Act, 28 U.S.C. § 2254 ("AEDPA"), Congress expressed its intent to preserve state criminal judgments from federal interference. Furthermore, congressional approval of presidential action in other contexts does not justify his actions here. Additionally, the President's actions conflict with the previous positions of the Executive Branch concerning the scope of the Vienna Convention.

Third, if this Court reaches the constitutionality of the President's Determination, then the President's Determination is unconstitutional. The Treaty Clause cannot be used to expand the powers of the National Government at the expense of the States. If the National Government cannot accomplish an objective directly, then it cannot use a treaty to accomplish the objective indirectly. Moreover, the President cannot commandeer state judges as the exclusive means of implementing a treaty. Similarly, under our constitutional arrangement, the President cannot direct the state judiciary to reopen a judgment in a criminal case.

ARGUMENT

I. MEDELLIN CANNOT ENFORCE THE JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE.

Following the cataclysm of the Second World War, the nations of the world established a variety of institutions designed to prevent future conflicts. One of these institutions is the International Court of Justice ("ICJ"), which provides a forum for *Nation States* to resolve their disputes without resort to violence. In asserting that private parties can enforce the judgment of the ICJ, Medellin's argument rests on a non-sequitur. He contends that because the *United States* is morally obligated to comply with the judgment of the ICJ in *Avena*, he can go to a State Court as a *private litigant* to enforce the judgment. The fact that Medellin's case was one of the cases that prompted Mexico to seek a judgment from the ICJ does not transmute the ICJ's judgment into one that a private party can enforce in a domestic court.

Under the treaty creating the ICJ, only Nation States can be parties before it. *Statute of the International Court of Justice*, Art. 34, 59 Stat. 1059 (1945). Medellin is a private party. Moreover, the decisions of the ICJ have "*no binding force* except between the parties and in respect of that particular case," *id.*, Art. 59, 59 Stat. 1062 (emphasis added). Two parties are before this Court: Medellin and Texas. Neither Texas nor Medellin was a party before the ICJ.

The travaux preparatoires of both the United Nations Charter and of the ICJ's Statute are barren of any discussion concerning domestic judicial enforcement of the ICJ's judgments. *See* United Nations Information Organization, 13 Documents of the United Nations Conference on International Organization, San Francisco, 1945, at 297-98; *id.*, vol. 14 at 209-10, 853. First, considering the wide variety of judicial systems in the world, this silence cannot be reconciled with automatic

judicial enforcement by private parties.[3] Second, during the debate concerning the ratification of the U.N. Charter, the Executive Branch offered testimony that the exclusive means for enforcing the judgments of the ICJ was through the Security Council.[4] Indeed, domestic enforcement of the ICJ's judgment would likely have derailed Senate ratification. As one author has noted,

> Ever since the movement in 1919 for a League of Nations, the Senate of the United States had been almost violently hostile to the concept of an international organization which might have or exercise authority to encroach on American domestic preserves. The representatives of the State Department of the United States at San Francisco were keenly aware of this hostility and of the need for Senate ratification of the instruments to be negotiated there in 1945.

Eberhard P. Deutsch, AN INTERNATIONAL RULE OF LAW 213 (1977).

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[3] Furthermore, given the lack of judicial independence of many of the world's judiciaries, a right of judicial enforcement would be a hollow remedy.

[4] The Charter of the United Nations: Hearings before the Senate Comm. on Foreign Relations, 79th Cong., 1st Sess. 286 (1945) (Statement of Leo Pasvolsky, Special Assistant to the Secretary of State); Hearings on S. Res. 196 before a Subcomm. of the Senate Comm. on Foreign Relations, 79th Cong., 2d Sess. 142 (1946) (statement of Charles Fahy, Legal Advisor of the Department of State). The debate over an amendment proposed by Senator Connally demonstrates the understanding of the Senate that the ICJ's judgments were to be enforced exclusively through the Security Council. *See generally* 92 Cong. Rec. 10694-95. *See also* Per Majid, *The Post-Adjudicative Phase*, 326-35 in INCREASING THE EFFECTIVENESS OF THE INTERNATIONAL COURT OF JUSTICE, Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court (Connie Peck & Roy S. Lee, eds., 1977) (noting that the judgments of the ICS are enforced thought "self help" and by resort to the Security Council).

Third, Medellin and his amici have not supplied any instances of foreign courts ascribing binding force to a judgment by the ICJ under domestic law.[5] Finally, a Panel on the Future of the International Court of Justice from the American Society of International Law recommended in 1973 that nations who were parties to the ICJ's Statute should "make provision in their domestic law for the execution of decisions rendered by the Court."[6] This recommendation by a body of experts would be entirely superfluous if judgments of the ICJ can be enforced automatically by private parties in the domestic systems of member nations. Indeed, this Court noted in *Sanchez-Llamas v. Oregon* that "[n]othing in the structure or purpose of the ICJ suggests that its interpretations were intended to be conclusive on our courts." 126 S. Ct. 2669, 2684 (2006).

Requiring courts to enforce the often politically sensitive determinations by the ICJ would inject the courts, including state courts, into sensitive foreign policy disputes for which they are ill suited to resolve. For example, after Nicaragua obtained an ICJ judgment against the United States, *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States)*, 1986 I.C.J. 14 (June 27), Nicaragua sought action by the Security Council to enforce the treaty. In response, the United States vetoed the Security Council Resolution. Under Medellin's view, private litigants disenchanted with this outcome could

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[5] To the contrary, courts have considered these judgments as persuasive but not binding. *Anglo-Iranian Oil Co. v. Idimitsu Kosan Kabushiki Kaisha*, 20 I.L.R. 305 (Japan, High Ct. Tokyo 1953), *Anglo-Iranian Oil Co. v. S.U.P.O.R. Co.*, 22 I.L.R. 23 (Italy, Civ. Ct. Rome 1954) (same). *See also Socobel v. Greek State*, 18 I.L.R. 3-5 (Belg. Trib. Civ. de Bruxelles 1951) (holding that the judgments of the predecessor to the ICJ, the Permanent Court of International Justice, were not domestically enforceable by private parties.).

[6] Leo Gross, *Conclusions*, in 2 THE FUTURE OF THE INTERNATIONAL COURT OF JUSTICE 727, 731-32 (Leo Gross ed., 1976).

have sought and obtained an injunction from a domestic court to enforce the judgment of the ICJ.

In sum, Medellin, as a private party, cannot enforce a judgment of the ICJ in a domestic court. Unless the President can confer upon Medellin a private right of action to enforce the judgment, his litigation must be dismissed. As explained below, the President's Determination is invalid because it is contrary to the intent of Congress.

II. THE PRESIDENT'S UNILATERAL DETERMINATION THAT PRIVATE PARTIES CAN ENFORCE *AVENA* CONTRAVENES CONGRESSIONAL INTENT.

The Framers of our Constitution sought to "diffuse[] power the better to secure liberty." *See Youngstown*, 343 U.S. at 635 (Jackson, J., concurring). Consequently, the Nation's power to conduct foreign affairs is not vested exclusively in one branch of the National Government. While the Executive Branch carries out the foreign policy of the United States, the Constitution vests Congress with considerable authority in this area. Congress has the power to regulate commerce with foreign nations, to define and punish piracies and felonies committed on the high seas and offenses against the law of nations, to declare war, to raise and support armies and to provide and maintain a navy. U.S. Const. art. I, § 8, cl. 11-13. Furthermore, the Senate must ratify treaties and approve ambassadors. U.S. Const. art. II, § 2. Finally, Congress may effectively repeal treaties by enacting subsequent legislation. *See Whitney v. Robertson*, 124 U.S. 190, 194 (1888) (when a statute and a treaty cannot be reconciled, the "one last in date will control the other.").

The Framers also sought to ensure that the National Government would be responsive to the States. The

Constitution safeguards state interests with respect to the Treaty Power by requiring Senate ratification by a super-majority of Senators. U.S. Const. art. II, § 2. Originally, the Senators were elected by the legislatures of the various States. U.S. Const. art. I, § 3, cl. 1. This system ensured a high degree of sensitivity to State concerns. That sensitivity may be reduced with the direct election of Senators, U.S. Const. amend. XVII, § 1, but even the modern process of Senate ratification provides some measure of protection for the States' interests. James Madison relied on these structural protections to dismiss arguments that the powers vested in the National government would prove "dangerous to the portion of authority left in the several States." *The Federalist No. 45*, at 256 (James Madison).[7]

Given the shared responsibility between Congress and the President and the importance of Senate ratification under our constitutional system of dual sovereignty, the authority of the President has been analyzed according to three tiers:

(1) "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown*, 343 U.S. at 635 (Jackson, J., concurring). Judicial deference, in these circumstances, is at its apex. *Id.* at 636-37 (Jackson, J., concurring).

(2) "When the president acts in absence of either a congressional grant or denial of authority, he can only rely

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[7] *See also The Federalist No. 69*, at 388 (Alexander Hamilton) (contrasting United States Constitution, which requires Senate ratification of treaties, with the British system, where "the prerogative of making treaties exists in the crown in its utmost plentitude."); *The Federalist No. 46*, at 265 (James Madison) (noting that the Congress will be "disinclined to invade the rights of the individual States, or the prerogative of their governments.").

upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.* at 637 (Jackson, J., concurring). The legal validity of the challenged Presidential action will likely "depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law." *Id.* (Jackson, J., concurring).

(3) "When the president takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain executive presidential control in such a case only by disabling the Congress from acting upon the subject." *Id.* at 637-38 (Jackson, J., concurring).[*]

In this instance, the President's Determination falls in the third tier, where presidential power is at its lowest ebb. Quite simply, the President's Determination that private parties can enforce *Avena* is contrary to the will of Congress. In ratifying the Vienna Convention, Congress did not intend to create any private rights or displace the state law rules of default. The President's Determination conflicts with the will of Congress to protect state judgments in criminal cases.

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[*] *See also Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2774 n.23 (2007); *Dames & Moore v. Regan*, 453 U.S. 654, 661-62 (1981); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936).

A. The President's Determination is Contrary to the Will of Congress.

1. In Ratifying the Vienna Convention, the Senate Did Not Intend to Create Private Rights of Action or Disrupt Ordinary Rules of Default.

As the United States consistently has argued in great detail, the Vienna Convention does not create any private rights of action that are judicially enforceable. *See Brief for the United States as Amicus Curiae Supporting Respondents* at 11-30, *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (2006) (Nos. 04-10566 and 05-51); *Brief for the United States as Amicus Curiae Supporting Respondent* at 18-30, *Medellin v. Dretke*, 544 U.S. 660 (2005) (No. 04-5928) ("Article 36 of the Vienna Convention . . . does not give a foreign national a judicially enforceable right to challenge his conviction or sentence.").[9] Congress has never sought to contradict this interpretation. Because the Vienna Convention itself, as ratified by the Senate, does not confer any private right of judicial redress, the Executive Branch cannot unilaterally confer such a right on a private party.

Allowing Medellin to reopen his case also would violate Congress' intent for the Vienna Convention to honor the application of state rules of procedural default. As this Court noted in *Sanchez-Llamas*, 126 S. Ct. at 2687, claims under the Vienna Convention may be subjected to ordinary rules of procedural default.[10] In ratifying the Vienna Convention, the Senate relied on the Executive Branch's assertions that the Vienna Convention would not

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[9] *See also Brief for Virginia* at 10-24, *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (2006) (*sub nom. Bustillo v. Johnson*) (No. 05-51).

[10] Therefore, the Vienna Convention differs from situations where a federal treaty is designed to preempt State law. *See, e.g., Hopkirk v. Bell*, 7 U.S. (3 Cranch) 454, 457 (1806) (state statute of limitations preempted by federal treaty). Here, the federal treaty honors rather than displaces state rules of criminal procedure.

disturb existing law for the States. S. Doc. Exec. E., 91st Cong., 1st Sess. (1969) (statement by the Chairman of the Senate Committee on Foreign Relations concluding that "the Convention does not change or affect present U.S. laws or practice."). The Executive Branch submitted written testimony assuring Congress that the Vienna "Convention does not have the effect of overcoming Federal or State laws beyond the scope long authorized in existing consular conventions," except with respect to a warrant requirement not relevant here. *See also* Appendix, S. Doc. Exec. E., 91st Cong., 1st Sess. (1969). *See also* Statement before the Senate Committee on Foreign Relations, S. Exec. Rep. No. 91-9, 91st Cong. at 5 (May 8, 1969) (statement of J. Edward Lyerly, Deputy Legal Adviser for Administration, U.S. Dep't of State) (advising the state governors that the United States Department of State did "not believe that the Vienna Convention will require significant departures from the existing practice within the several states of the United States."). The Senate sought and obtained assurances that the Vienna Convention would not displace ordinary rules of state criminal procedure. Allowing a private litigant to set aside these rules of procedural default would conflict with Congressional intent.

2. Congress Has Protected the Final Judgments of States Courts Through the AEDPA.

In enacting the AEDPA, Congress codified significant protections for the judgments of state courts in criminal cases. The litigation in the ICJ over the United States' obligations under the Vienna Convention has continued for more than a decade. *See Case Concerning the Application of the Vienna Convention on Consular Relations (Paraguay v. United States)* 1998 I.C.J. (April 7). In the face of this high-profile and long-running litigation, Congress has

never diluted the protections afforded to State criminal judgments by the AEDPA. The President's Determination thus violates Congress' intent to protect state final judgments in criminal cases. While the AEDPA protects state criminal judgments from collateral attack in federal courts, it reflects Congress' recognition of the indignity suffered by the States when their judgments are set aside by a branch of the National Government.

B. Congress' Implicit or Explicit Approval of Presidential Action in Other Contexts Does Not Validate the Unprecedented Determination Made Here.

In more than 200 years of constitutional history, the Nation has suffered its share of wars and diplomatic crises. It is telling, given this history, that neither Medellin nor the United States can cite a single instance of a President ordering a state court to reopen and readjudicate a final judgment. To overcome this glaring deficiency, the United States and Medellin must fall back on broad propositions and inapposite authority to create the illusion of Congressional support for the President's action.

1. The President's Actions to Implement Past ICJ Decisions Do Not Justify the Determination Made Here.

The United States claims that Congress has accorded the Executive Branch broad latitude in implementing the decisions of the ICJ. *United States Amicus Br.* at 19. None of these implementation actions, however, involved a command to a State to set aside a final judgment. For example, the measures taken by the President to adjust the United States' boundary with Canada, based on an ICJ decision, hardly resemble the uniquely intrusive determination in the case at bar. *Id.* at 20. None of the

examples cited in the United States' brief flew in the face of strong Congressional policy such as the one enacted into law through the AEDPA and through the ratification of the Vienna Convention. Put differently, although the President has the power to take *some* unilateral steps to enforce ICJ decisions, the President does not have the power to take *any and all* unilateral actions.

The United States stresses that the President must be permitted to act expeditiously in responding to an ICJ decision to avoid endangering certain foreign policy objectives. *United States Amicus Br.* at 12. The States do not dispute the need for prompt action in certain circumstances. That prompt action, however, cannot flout the will of Congress or the limits of the Constitution. Furthermore, the need to act with dispatch is not justified here. There is no mention in the President's Determination of any crisis or of the need for expedited action. Indeed, the President made his Determination almost one year after the ICJ's decision in *Avena*. Furthermore, the remedy itself consists of protracted litigation.

Other statutes relied upon by the United States are similarly bereft of Congressional authorization for the President's Determination. The statute delineating the President's interaction with the United Nations, 22 U.S.C. §§ 287 through 287t, contains nothing that would justify the President's Determination. The United States does not point to any specific provision of this statute that would authorize the Determination at issue. The same applies to the Senate's ratification of the Optional Protocol. The Optional Protocol, which is itself a part of the Vienna Convention, does not salvage the President's Determination. *Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes*, 21 U.S.T. at 326, 596 U.N.T.S. at 488. The Optional Protocol is silent about private rights of action and does not authorize the President to set aside

and reopen the judgments of state courts. Rather, it simply consents to the jurisdiction of a tribunal that requires the consent of the parties to adjudicate a particular controversy.[11]

2. Other Executive Branch Practices Do Not Justify the President's Determination.

Medellin and the United States attempt to fit the President's unprecedented Determination into longstanding practices of the Executive Branch. The United States notes that the Executive Branch unilaterally has preempted state law in the past in resolving disputes with foreign nations. *United States Br.* at 12-16. None of the cases cited in support of this proposition involved Presidential action that conflicted with the provisions of a ratified treaty as well as Congressional policy, and none of these cases required a state court to reopen and readjudicate a concluded criminal case. Rather, the cases address the authority of the Executive Branch to settle international property disputes.

United States v. Pink, 315 U.S. 203, 213-14 (1942) and *United States v. Belmont*, 301 U.S. 324, 328-31 (1937), addressed property claims against Russian corporations under the Litvinov Agreement, an executive agreement that, among other things, afforded diplomatic recognition of the U.S.S.R. by the United States. The agreement turned over certain property to the United States government and permitted the United States to use that property to satisfy claims against the U.S.S.R. *Belmont*, 301 U.S. at 222-23. When New York refused to implement this arrangement, the Court held that New York law must yield to the Litvinov Agreement. *Belmont*, 301 U.S. at 327; *Pink*, 315 U.S. at 232-34. In other words, the executive

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[11] *Statute of the International Court of Justice*, June 26, 1945, 59 Stat. 1055, art. 36 (noting that jurisdiction of the ICJ depends on a nation's consent).

agreement trumped contrary state law. In both cases, the Court stressed that the executive agreement was concluded as a part of the diplomatic recognition process for which the President has broad authority. *Belmont*, 301 U.S. at 330; *Pink*, 315 U.S. at 226-27. Furthermore, the Court emphasized the acquiescence of Congress in the President's action. *Pink*, 315 U.S. at 227-28.

In *Dames & Moore*, 453 U.S. at 662, this Court approved an executive agreement intended, *inter alia*, to resolve the hostage crisis with the revolutionary government of Iran. A recurring source of friction involved claims by United States citizens against the Iranian government and claims by Iranians against the United States and American citizens. *Id.* at 662-67. A claims tribunal was established to resolve these disputes. Presidents Reagan and Carter issued Executive Orders that seized Iranian property and transferred it to an account that would be drawn down to satisfy awards against Iran. The Executive Orders also suspended claims pending in American courts that could be presented to the tribunal. *Id.* at 662-66. The Court upheld the Presidents' actions, relying on the longstanding authority of the Executive Branch to settle claims by American citizens against foreign governments and Congress' long acquiescence in such settlements by the President. *Id.* at 680-82, 687-88.

Finally, in *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 401 (2003), the Court held that a California statute designed to force European insurance companies to pay Holocaust-related claims was preempted by a series of executive agreements. This state statute conflicted with an executive agreement between the United States and Germany, which provided for such claims to be funded by a particular foundation. *Id.* at 406-07. The Court again relied on the President's recognized authority to settle property claims by United States citizens against foreign governments or citizens by executive agreement, a practice

that "has received congressional acquiescence throughout its history." *Id.* at 415. The Court also noted the weakness of the state interest in this area. *Id.* at 420.

The President has participated in the settlement of international property disputes since 1799. *Garamendi*, 539 U.S. at 415. Furthermore, Congress has long acquiesced in this practice. This authority should not be expanded beyond its historical roots and applied to unprecedented assertions of Presidential authority. None of these cases involved Congressional approval or acquiescence for the President to unilaterally compel a state court to reopen a concluded case to satisfy a foreign policy objective. Moreover, none of these decisions suggests that the President may unilaterally preempt any and all state laws in pursuit of a foreign policy objective.

The President's Determination in this case is similar to the authority claimed by the President in *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5 (1936). In that case, United States citizens were arrested for crimes allegedly committed in France. *Id.* at 6. They filed habeas corpus petitions, arguing that the treaty with France did not authorize the President to extradite United States citizens. *Id.* The Court agreed rejecting the President's argument that a treaty's silence on the subject of the extradition of United States nationals did not preclude the President from extraditing United States citizens. *Id.* at 9. The Court held that "[i]t is not enough that statute or treaty does not deny the power to surrender. It must be found that statute or treaty confers the power." *Id.* The Court observed that "[h]istory and practice not only do not support, but they rather negative, the claim of an implied discretionary power." *Id.* at 13. In the case at bar, the President's Determination likewise draws no support from history. To the contrary, it transgresses the ancient and "salutary principle" of res judicata. *Heiser v. Woodruff*, 327 U.S. 726, 733 (1946).

Similarly, in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 189-90 (1999), this Court invalidated an Executive Order issued in 1850 by President Taylor. The order removed Native Americans from certain lands. *Id.* at 188. The Executive Order was invalid, the Court concluded, because the 1837 Treaty on which it was based "makes no mention of removal, and there was no discussion of removal during the Treaty negotiations." *Id.* at 189. If a treaty's *silence* does not confer a particular power on the President, then the President cannot claim authority to remedy a violation of a treaty in a way that contravenes the terms of the treaty. In ratifying the Vienna Convention, Congress sought to protect the criminal law systems of the States. The President's action violates this Congressional intent.

It is also significant that the authority asserted by the President to set aside unilaterally and reinstitute concluded state litigation conflicts with the will of Congress, and with prior determinations by the Executive Branch concerning the scope of its authority. In its brief before this Court in *Breard v. Greene*, 523 U.S. 371 (1998), the United States took the view that

> [o]ur federal system imposes limits on the federal government's ability to interfere with the criminal justice systems of the States. The 'measures at [the United States'] disposal; under our Constitution may in some cases include only persuasion – such as the Secretary of State's request to the Governor of Virginia to stay Breard's execution – and not legal compulsion through the judicial system. That is the situation here.

Brief for the United States as Amicus Curiae at 51 (Nos. 97-1390 and 97-8214). Following the ICJ's decision in *LaGrand*, *(Federal Republic of Germany v. United States)*, 2001 I.C.J. 466 (June 27), the President encouraged the States to consider any violation of the Vienna Convention as a part of their clemency and parole

process. *See United States Amicus Br.* at 20-21. Prior assessments of the scope of Executive authority undermine the sweeping claim of unilateral authority made in the case at bar.

In resolving this case, the States stress that the Court need not spell out the precise contours of presidential power. Rather, it is sufficient to hold that when the Senate ratifies a treaty that honors state rules of procedural default and does not confer private rights of action, the President lacks the authority unilaterally to create a remedy that circumvents this congressional intent. This conclusion draws added force from Congress' protection of state court judgments in criminal cases through the AEDPA. Such a holding would not only be faithful to the text and history of the Vienna Convention, it also would avoid thorny Constitutional questions regarding the conflict between the unprecedented Presidential authority claimed by the Executive Branch in this matter and the residuum of sovereignty the Constitution reserves to the States.[12]

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[12] To the extent Medellin's action constitutes a civil cause of action rather than the reopening of a criminal case, sovereign immunity bars such a cause of action. Sovereign immunity does not preclude this Court from reviewing federal issues surrounding a state criminal conviction, *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 392 (1821), nor does it preclude this Court from examining in a habeas corpus action whether a state inmate is being detained in violation of United States law. *See, e.g., Bustillo v. Johnson*, *cert. granted*, 126 S. Ct. 621 (2005), *aff'd sub nom. Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (2006). Habeas proceedings are typically against the jailer, not the sovereign, and, thus, sovereign immunity is not implicated. *See Ex parte Young*, 209 U.S. 123, 159-60 (1908). In this proceeding, however, the sole respondent is the State of Texas. Medellin is bringing a federal law claim – that the President's Determination that compliance with a treaty requires the Texas courts to ignore state law – against a State. Unless validly abrogated by Congress, waived by the State, or surrendered in the plan of the Constitutional Convention, sovereign immunity bars any federal claim against the State. *Alden v. Maine*, 527 U.S. 706, 755-56 (1999). This attribute of sovereignty applies to treaties as well as to statutes, which share equal dignity under the Supremacy Clause.

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III. THE PRESIDENT'S DETERMINATION CONTRAVENES THE PRINCIPLE OF DUAL SOVEREIGNTY.

In the event the Court reaches the constitutionality of the President's Determination, the President's Determination violates the Constitution. In our constitutional system of dual sovereignty, the Executive Branch cannot require that state courts serve as the exclusive vehicle to enforce

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Moreover, Medellin cannot circumvent Texas' sovereign immunity by asserting that he is merely enforcing the obligations of the United States. "The consent, 'inherent in the convention,' to suit by the United States – at the instance and under the control of responsible federal officers – is not consent to suit by anyone whom the United States might select; and even consent to suit by the United States for a particular person's benefit is not consent to suit by that person himself." *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 785 (1991). *See also United States ex rel. Long v. SCS Bus. & Technical Inst., Inc.*, 173 F.3d 870, 883 (D.C. Cir. 1999) ("To assume that the United States possesses plenary power to do what it will with its Eleventh Amendment exemption is to acknowledge that Congress can make an end-run around the limits that that Amendment imposes on its legislative choices."). Even if the United States constitutionally may delegate its sovereign exemption, it has not done so. "[I]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (internal quotation marks omitted). "[T]he clear statement principle reflects 'an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere.'" *Raygor v. Regents of the Univ. of Minnesota*, 534 U.S. 533, 544 (2002). Thus, if Medellin is going to claim that the United States' sovereign exemption has been delegated to him, he must identify a statute that clearly and unambiguously delegates the sovereign exemption. *See Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 787 (2000) ("Because Congress did not clearly and unambiguously state that a State was a "person" under the False Claims Act, a *qui tam* relator could not bring suit on behalf of the United States against a State").

an international obligation and that they do so by reopening a final judgment in a criminal case.

A. The Treaty Clause Cannot Be Used To Expand the Powers of the Federal Government to the Detriment of the States.

The constitutional principle of dual sovereignty applies when the President negotiates and the Senate ratifies a treaty. Michael D. Ramsey, *The Treaty Clause* in THE HERITAGE GUIDE TO THE CONSTITUTION 205, 207 (Edwin Meese III, Matthew Spalding, & David Forte, eds., 2005) ("A treaty presumably cannot alter the constitutional structure of government. . . ."). "It would be manifestly contrary to the objectives of those who created the Constitution, as well as those who were responsible for the Bill of Rights – let alone alien to our entire constitutional history and tradition – to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions." *Reid v. Covert*, 354 U.S. 1, 17 (1957). The National Government "is one of limited powers" and its authority cannot be "enlarged under the treaty-making power." *New Orleans v. United States*, 35 U.S. (10 Pet.) 662, 736 (1836). "[A] treaty cannot change the Constitution or be held valid if it be in violation of that instrument." *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 620-21 (1870). Consequently, "the treaty power should be subject to the same federalism limitations that apply to Congress' legislative powers. [The National Government] should not be able to use the treaty power (or executive agreement power) to create domestic law that could not be created by Congress." Curtis A. Bradley, *The Treaty Power & American Federalism*, 97 MICH. L. REV. 390, 450 (1998) (parenthesis in original).[13]

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[13] *See also id.* at 456 ("Under this approach, the treaty power would not confer any additional regulatory powers on the federal government,

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Put another way, the Treaty Clause does not "authorize what the constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent." *Geofroy v. Riggs*, 133 U.S. 258, 267 (1890). If Congress and the President cannot accomplish an objective directly using the powers conferred upon them by the Constitution, then they may not use the Treaty Clause to accomplish the same thing *indirectly*. *Cf. Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 59-60 (2006) ("[T]the Solomon Amendment would be unconstitutional if Congress could not directly require universities to provide military recruiters equal access to their students."). For example, since Congress cannot abrogate the States' sovereign immunity for intellectual property claims directly, *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 636 (1999), it cannot use the Treaty Clause to abrogate sovereign immunity *indirectly*. *See* Carlos Manuel Vázquez, *Treaties and the Eleventh Amendment*, 42 VA. J. INT'L L. 713 (2002) (concluding that the States' sovereign immunity cannot be abrogated through the Treaty Power).[14] If the President

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just the power to bind the United States on the international plane. Thus, for example, it could not be used to resurrect legislation determined by the Supreme Court to be beyond Congress's legislative powers, such as the legislation at issue in the recent *New York*, *Lopez*, *Boerne*, and *Printz* decisions."). *Cf.* Ramsey, *supra*, at 207 ("The revival of interest in federalism limits on Congress in such areas as sovereign immunity and the Tenth Amendment raises the question of whether these limits also apply to the treaty power . . . ").

[14] *See also College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 683 (1999) ("Recognizing a congressional power to exact constructive waivers of sovereign immunity through the exercise of Article I powers would also, as a practical matter, permit Congress to circumvent the antiabrogation holding of *Seminole Tribe*. Forced waiver and abrogation are not even different sides of the same coin – they are the same side of the same coin.")

cannot require state courts to reopen and readjudicate criminal cases pursuant to a statute, then he may not do so pursuant to a treaty.

Missouri v. Holland, 252 U.S. 416 (1920), might be viewed as holding that the National Government can expand its powers vis-à-vis the States by entering into treaties with foreign nations.[15] This expansive view of *Holland* "is in deep tension with the fundamental constitutional principle of enumerated legislative powers." Nicolas Quinn Rosenkranz, *Executing the Treaty Power*, 118 HARV. L. REV. 1867, 1868 (2005).[16] The better view of *Holland* is that it held there are some actions that the National Government can take pursuant to the Treaty Clause, U.S. Const. art. II, § 2, cl. 2, that it cannot take pursuant to the Commerce Clause, U.S. Const. art. I, § 8, cl. 3.[17] In other words, the Treaty Clause confers a different

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[15] *See* Richard A. Epstein, *Smoothing the Boundary Between Foreign and Domestic Law: Comments on Professors Dodge, Golove, and Stephan*, 52 DEPAUL L. REV. 663, 667 (2002) ("The treaty power imposes no specific subject matter limitation on the President or Senate."); Robert Knowles, *Starbucks and the New Federalism: The Court's Answer to Globalization*, 95 NW. U. L. REV. 735, 750 (2001) ("Today . . . most scholars support the view that the treaty power has no subject-matter limitation."); John C. Yoo, *Laws as Treaties?: The Constitutionality of Congressional-Executive Agreements*, 99 MICH. L. REV. 757, 838 (2001) ("[U]nlike statutes, treaties have no defined subject matter, which means that the treaty makers can enter into an international agreement on any matter, regardless of whether the Constitution grants control over it to another branch.").

[16] *Compare Australia v. Tasmania*, (1982) 158 CLR 1 (Austl.) (National Government of Australia can expand its powers vis-à-vis the Australian States by entering into treaties) with *Canada v. Ontario*, [1937] A.C. 326, 354 (P.C.) (appeal taken from Can.) (National Government of Canada cannot expand its powers vis-à-vis the Provinces by entering into treaties).

[17] Moreover, there was no issue that state game wardens were improperly commandeered to implement the treaty *Holland*, 252 U.S. at 431. The treaty was to be carried out by "officers of the United States." *Id.* at 434.

(and in some cases broader) power than that conferred by the Commerce Clause. *See* Bradley, *supra*, at 426.[18] While this interpretation of *Holland* still results in a broad Treaty Clause power for the National Government, it preserves the constitutional principle of dual sovereignty as a substantive limitation on the Treaty Clause. *See* Charles Cooper, *Reserved Powers of the States* in THE HERITAGE GUIDE TO THE CONSTITUTION 371, 374 (Edwin Meese III, Matthew Spalding, & David Forte, eds., 2005) ("Even if modern developments permit (or require) expansion of congressional authority well beyond its eighteenth century limits, such expansion cannot extinguish the 'retained' role of the states as limited but independent sovereigns.").

To adopt the expansive view of *Holland* would mean "the treaty power may be used to evade the limits that the Supreme Court has marked on the legislative power of Congress [and the executive power of the President]." Rosenkranz, *supra*, at 1871. For example, although the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb through 2000bb-4, is unconstitutional as applied to the States, *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997), Congress conceivably could use the *International Covenant on Civil and Political Rights* (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (approved by the United States Senate on Apr. 2, 1992), to impose an identical statute on the States.[19] Similarly, while some aspects of

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[18] *See also* C.M. Micou, Comment, *The Treaty Making Power and the Constitution*, 6 CORNELL L.Q. 91, 95 (1921) (offering a similar interpretation of *Holland*).

[19] *See* Gerald L. Neuman, *The Global Dimension of RFRA*, 14 CONST. COMMENT. 33, 53 (1997) ("[I]CCPR Article 18 probably does not provide a proper basis for upholding RFRA as enacted in 1993, although it would support a verbatim reenactment of the statute if Congress so chose."); Jeri Nazary Sute, *Comment, Reining RFRA: Congressional Use of Treaty-Implementing Powers To Protect Religious Exercise Rights*, 12 EMORY INT'L L. REV. 1535, 1538 (1998) ("Congress's treaty-implementing power appears to provide a strong constitutional

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the Violence Against Women Act, 42 U.S.C. § 19381, are unconstitutional, *United States v. Morrison*, 529 U.S. 598, 627 (2000), the ICCPR conceivably would empower Congress to enact the same provisions.[20] Such circumventions of this Court's holdings regarding the limits of federal authority would be contrary to our constitutional structure and tradition. As this Court is the ultimate arbiter of the Constitution, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), *Flores* and *Morrison* can be overruled only by constitutional amendment, not by treaty.

The intrusion on state sovereignty is even more acute where, as here, the President acts unilaterally. A few examples demonstrate the breadth of the power claimed

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basis for a revised statute protecting religious exercise. . . . Such action also should be taken to fulfill the obligations that the United States accepted when it ratified the [ICCPR] in 1993.").

[20] *See* Catharine A. MacKinnon, *The Supreme Court, 1999 Term – Comment: Disputing Male Sovereignty: On United States v. Morrison*, 114 HARV. L. REV. 135, 167 (2000) ("The International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, supports congressional use of the legislative power to address violence against women in society and under law." (footnote omitted)); Ana Maria Merico-Stephens, *Of Federalism, Human Rights, and the Holland Caveat: Congressional Power To Implement Treaties*, 25 MICH. J. INT'L L. 265, 274 (2004) ("I consider whether the civil remedy provision of the Violence Against Women Act (VAWA), struck down in *Morrison*, could be reenacted as implementing legislation for the International Covenant on Civil and Political Rights . . . and conclude that it could have." (footnotes omitted)); Jordan J. Paust, *Human Rights Purposes of the Violence Against Women Act and International Law's Enhancement of Congressional Power*, 22 HOUS. J. INT'L L. 209, 221 (2000) ("[I]t is clear that Congress has power under the Constitution to enact the Violence Against Women Act partly to better effectuate the human rights of women to freedom from domestic violence. . . . Choice and power of our national political branches to effectuate international law, especially in view of the Supremacy Clause, provide an overriding constitutional propriety of the VAWA regardless of the reach of the commerce power.").

for the President. The death penalty has been a frequent source of friction in the United States' relations with Europe. Under Medellin's theory, a future President might conclude that, to ameliorate our relations with this critical trade and military ally, the States must abolish the death penalty. Conversely, a future President might respond to persistent criticism that the United States has not taken sufficient measures to combat drug trafficking by ordering States to impose the death penalty on drug kingpins - including States that have decided to eliminate the death penalty. A President could respond to international frustration with the tort system in the United States by ordering States to set aside certain product liability judgments. Or a President might unilaterally determine that certain environmental protections enacted at the state level would hamper good relations with foreign nations, because these laws will reduce the export of critical foodstuffs to nations that need them. If so, the President could make a determination that these States' environmental statutes must be disregarded in the interest of good international relations. Finally, some nations in the world view single-sex marriage or adoption by single-sex couples as an advance for individual rights, while other nations view these practices with strong disapproval.[21] Under the sweeping power asserted in the case at bar, nothing would preclude the

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[21] The Charter of Fundamental Rights of the European Union, in Article 21, prohibits discrimination based on sexual orientation. *See* Charter of Fundamental Rights of the European Union, art. 21, 2000 O.J. (c. 364) 21, available at http://www.europarl.eu.int/charter/pdf/text_en.pdf. In addition, the European Parliament has passed a number of resolutions condemning homophobia. *See, e.g.*, European Parliament, Resolution of April 27, 2007 on Homophobia in Europe (noting previous resolutions on the subject), P6_TA-PROV (2007) 0167. Other nations, however, impose punishments such as whipping or even death for sexual activity by homosexuals. *See* Rob Tielman & Hans Hammelburg, *World Survey on the Social and Legal Position of Gays and Lesbians*, *in* THE THIRD PINK BOOK: A GLOBAL VIEW OF LESBIAN AND GAY LIBERATION AND OPPRESSION 249, 249-342 (Aart Hendriks, Evert van der Veen, & Rob Tielman, eds., 1993).

President from unilaterally determining that States either must recognize, or are forbidden from recognizing these practices. For example, the President could single-handedly determine that for the sake of good relations with the European Union, the States that have amended their constitutions to forbid single-sex marriage must ignore these provisions. Conversely, the President could determine that the States which have recognized single-sex marriage can no longer do so.

Because the Treaty Clause cannot expand the powers of the National Government to the detriment of the States, Medellin cannot rely exclusively on the President's Determination to reopen his final judgment. Rather, Medellin must demonstrate that, separate from any treaty, there is an independent constitutional power that would allow the President to require state judges to reopen a closed case. *Cf. Rumsfeld*, 547 U.S. at 59-60 (In determining whether Spending Clause statute violated the First Amendment, the key issue was whether Congress could enact the legislation directly without violating the First Amendment).

B. The National Government May Not Commandeer State Judges as the Exclusive Vehicle to Implement the National Government's Objectives.

"Although the Constitution grants broad powers to Congress, our federalism requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation." *Alden*, 527 U.S. at 748. Among other attributes of sovereignty, the Constitution "recognizes and preserves the autonomy and independence of the States, – independence in their legislative and independence in their judicial departments." *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78-79 (1938). The National

Government may not "pursue federal objectives through the state judiciaries," *Alden*, 527 U.S. at 753. "A power to press a State's own courts into federal service to coerce the other branches of the State, furthermore, is the power first to turn the State against itself and ultimately to commandeer the entire political machinery of the State against its will and at the behest of individuals." *Id.* at 749. The President's Determination purports to promulgate procedural rules uniquely directed at state courts and to force state courts, and only state courts, to reopen their final judgments to satisfy a National obligation. This determination is essentially the same as telling a State that it must adopt a specific law or a specific set of court rules. *Cf. New York*, 505 U.S. at 176 (Congress may not direct States to pass legislation).[1]

State courts of "adequate and appropriate" jurisdiction, *Testa v. Katt*, 330 U.S. 386, 394 (1947), may be required "to enforce federal prescriptions, insofar as those prescriptions relat[e] to matters appropriate for the judicial power," *Printz v. United States*, 521 U.S. 898, 907 (1997). However, this requirement to hear federal claims is not absolute. A state court may refuse to hear a federal claim if the refusal is based on a state law that bars *both* federal and state claims alike under similar circumstances. *Missouri ex rel. Southern Ry. v. Mayfield*, 340 U.S. 1, 4 (1950).[2] Conversely, if the state law bars federal claims, but permits similar state claims, the state court must hear the federal claim. *See Howlett v. Rose*, 496

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[2] *See also Herb v. Pitcairn*, 324 U.S. 117, 123 (1945) (upholding a state court's dismissal of a federal claim under a state law barring jurisdiction in a city court over causes of action arising outside the city, and stating the rule that "the cause of action must not be discriminated against because it is a federal one."); *Douglas v. New York, New Haven & Hartford R.R.*, 279 U.S. 377, 387 (1929) (upholding a state court's dismissal of a federal FELA claim based on a state law barring actions by nonresidents against foreign corporations).

U.S. 356, 375 (1990). In other words, in refusing to hear claims, a state court may not discriminate between similar federal and state claims. Here the President's Determination seeks to stand that proposition on its head, by requiring a state court to serve as the exclusive forum for adjudicating a federal claim.

The President's Determination differs in nature from the routine adjudication of federal law by State courts. It purports to command state courts, and only state courts, to reopen and readjudicate a concluded case, for a select group of litigants, when the adjudication in the first instance was proper under state and federal law. This stretches the holding in *Testa* far beyond its historic rationale and impermissibly invades state sovereignty.

C. The National Government Cannot Direct State Courts to Reopen a Final Judgment.

In *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), this Court examined a federal statute that allowed plaintiffs in securities actions to reinstate litigation that had proceeded to final judgment. *Id.* at 214-15. When plaintiffs sought to avail themselves of this statute to reopen their cases, this Court rebuffed these attempts holding that the statute violated the doctrine of separation of powers. *Id.* at 225. The Court noted that the Framers understood the Constitution to extinguish the common practice of legislative interference with final judgments, a practice that had been common during colonial times. *Id.* at 221-22. The Framers' desire to end legislative interference with final court decisions cannot be reconciled with the authority claimed here by the President to accomplish this very same object with state courts.[23] "[T]here can be no serious contention . . . that

[23] In addition to vitiating the final judgment of a state court, re-opening the state case would have the effect of rendering a nullity

(Continued on following page)

the Supremacy Clause imposes greater obligations on state-court judges than on the Judiciary of the United States itself." *Alden*, 527 U.S. at 753.

Of course, a habeas corpus petition, although technically a challenge to the legality of a detainee's incarceration, will, if successful, result in a vacated criminal conviction. *See, e.g.*, *Peyton v. Rowe*, 391 U.S. 54, 58 (1968). In this instance, however, Medellin's habeas claims have been litigated to finality. If Congress cannot alter the statute of limitations for civil securities litigation and order the cases retried, neither can Congress alter the state statute of limitations in concluded civil habeas cases and order these cases relitigated. In either event, the legislative measure violates the doctrine of separation of powers. Therefore, even if the President can claim Congressional approval, the Constitution does not permit him to order Texas to reopen and readjudicate a concluded criminal case.

Indeed, the result is even more egregious when the President's action reaches not only across government branches, but also trespasses upon core aspects of state sovereignty. Because the "States possess primary authority for defining and enforcing the criminal law," *Engle v. Isaac*, 456 U.S. 107, 128 (1982), this Court has "been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the States' interest in the integrity of their criminal and collateral proceedings." *Williams v. Taylor*, 529 U.S. 420, 436 (2000).[4] The President's Determination breaches the

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the final judgment of two federal courts with respect to Medellin's federal habeas corpus petition.

[4] *See also McCleskey v. Zant*, 499 U.S. 467, 493 (1991) ("[T]he doctrines of procedural default and abuse of the writ are both designed to lessen the injury to State that results through reexamination of a state conviction on a ground that the State did not have the opportunity to address at a prior, appropriate time; and both doctrines seek to vindicate the State's interest in the finality of its criminal judgments.").

Constitution's protections of federalism and separation of powers and cannot be sustained.

CONCLUSION

For the reasons stated above, in Texas' Brief, and in the Briefs of the other Amici supporting Texas, the judgment of the Court of Criminal Appeals of Texas should be **AFFIRMED**.

Respectfully submitted,

ROBERT F. MCDONNELL
Attorney General of Virginia

WILLIAM E. THRO
State Solicitor General
Counsel of Record

STEPHEN R. MCCULLOUGH
Deputy State Solicitor General

WILLIAM C. MIMS
Chief Deputy Attorney General

OFFICE OF THE
ATTORNEY GENERAL
900 East Main Street
Richmond, Virginia 23219
(804) 786-2436
(804) 786-1991 (facsimile)

Counsel for the
Commonwealth of Virginia

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[Additional Counsel Listed On Inside Cover]